

respondent included loading and unloading chemicals from trucks, shredding chemical containers, crushing drums that contained chemicals, and cleaning up chemical spills in the warehouse. Claimant left his employment for respondent in mid-January 1995. He quit the job to take a job with A & S Farms, a job which provided better wages, housing, and benefits. Claimant's work at A & S Farms included spraying chemicals. He worked for A & S Farms for approximately six months and testified that approximately four weeks of that time involved the use of spraying chemicals.

On July 10, 1995, claimant began experiencing symptoms which included painful swelling on the left side of his neck and numbness on the entire left side of his body. Claimant was not spraying chemicals on that date. He was taken to the emergency room by a representative of A & S Farms. He was, thereafter, treated for a variety of symptoms, including dizziness and blurred vision. He was seen by a neuropsychologist and referred to Dr. Hinshaw. Dr. Hinshaw recommended claimant obtain legal counsel. Claimant saw his present legal counsel on October 9, 1995, and a claim for workers compensation benefits was faxed to the respondent on the same day.

K.S.A. 44-5a17 requires that notice of an occupational disease be given within 90 days of disablement therefrom.

K.S.A. 44-5a04 defines "disablement" as:

"the event of an employee becoming actually incapacitated, partially or totally, because of an occupational disease, from performing the employee's work in the last occupation in which injuriously exposed to the hazards of such disease"

Claimant served his claim for compensation on respondent 91 days after he left his employment with A & S Farms on July 10, 1995. The notice was substantially more than 90 days after he left his employment with the respondent. There is no indication in the record the respondent had actual knowledge.

Claimant relies on Ross v. Beech Aircraft Corporation, 214 Kan. 888, 522 P.2d 369 (1974). Claimant argues that the Ross decision stands for the proposition that claimant is not disabled until he or she ascertains the cause of the condition. The Appeals Board does not consider the Ross decision as support for claimant's argument. The Ross decision does indicate that, in that case, claimant did not become disabled until after he ascertained the cause of his condition. The case does not appear to stand for the proposition that the date that claimant ascertained the cause of his illness is the same as the disablement.

The Appeals Board, therefore, concludes that claimant's notice was substantially more than 90 days after his last day of employment for respondent and more than 90 days

after the last date that he was exposed to chemicals in any employment. The claim should, therefore, be denied and the Order by the Administrative Law Judge affirmed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Jon L. Frobish dated May 28, 1996, should be, and hereby is, affirmed.

IT IS SO ORDERED.

Dated this ____ day of August 1996.

BOARD MEMBER

c: Jack W. Shultz, Dodge City, KS
John David Jurcyk, Lenexa, KS
Jon L. Frobish, Administrative Law Judge
Philip S. Harness, Director